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8 Attorneys for Defendant
APPLE INC.

9
10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13 PAUL HOLMAN and LUCY RIVELLO,
14 individually and on behalf of all others
similarly situated,

15 Plaintiffs,

16 v.

17 APPLE, INC., AT&T MOBILITY, LLC, and
18 DOES 1 through 50, inclusive,

19 Defendants.

CASE NO. C 07-05152 JW

**NOTICE OF PENDENCY OF OTHER
ACTION OR PROCEEDING**

[PURSUANT TO L.R. 3-13]

1 Defendant Apple Inc. ("Apple") hereby notifies the Court, pursuant to Civil Local
2 Rule 3-13, of the pendency of two actions which involve the same or similar subject matter and
3 substantially all of the same parties as the instant case.

4 On October 5, 2007, plaintiff Timothy P. Smith, on behalf of himself and all
5 others similarly situated, filed a complaint against Apple in the Superior Court for the State of
6 California, County of Santa Clara, Case No. 1-07-CV-095781 ("*Smith v. Apple*"). As is true with
7 the instant case, the *Smith* Complaint alleges that Apple's agreement with AT&T Mobility for
8 iPhone wireless services, Apple's version 1.1.1 software release which allegedly disabled some
9 unlocked iPhones, and other allegedly restrictive practices with respect to the iPhone constitute
10 unlawful conduct. The Complaint alleges violations of California's Cartwright Act (California
11 Business and Professions Code §§ 16720 and 16727), California Business and Professions Code
12 § 17200, *et seq.* (unfair competition), and common law monopolization.

13 On August 27, 2007, plaintiff Herbert H. Kliegerman, on behalf of himself and
14 others similarly situated, filed a Complaint against Apple in the Supreme Court of the State of
15 New York, County of New York, Index No. 111681/2007 ("*Kliegerman v. Apple*"). The
16 Complaint was subsequently removed, on September 27, 2007, to the United States District
17 Court for the Southern District of New York, Case No. 1-07-CV-08404-PKC. The *Kliegerman*
18 Complaint alleges that Apple failed to adequately warn iPhone purchasers that the iPhone was
19 locked to only accept AT&T SIM cards, that SIM card unlocking codes would not be provided to
20 iPhone owners, and that iPhone owners would incur roaming charges when traveling abroad.
21 The Complaint alleges violations of New York General Business Law § 349.

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1 Apple believes that coordination or transfer of these actions will avoid conflicts,
2 conserve resources, and otherwise promote efficient determination of the matters.

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4 Dated: October 31, 2007

Respectfully submitted,

5 LATHAM & WATKINS LLP

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7 By /s/ Christopher S. Yates

8 Christopher S. Yates
9 Attorneys for Defendant
APPLE INC.

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